

September 30, 2011

Chairman Phillip Isenberg
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA
95814

Re: Fifth Staff Draft Delta Plan

Dear Chairman Isenberg, Council, and staff:

Thank you for the opportunity to comment on the fifth draft of the Delta Plan. The following comments are in addition to those provided in our letter dated May 6, 2011.

We remain deeply concerned that the Delta Plan will set in motion unintended consequences that will impede the success of the five Delta County multi species HCP/NCCPs¹. As a reminder, these conservation plans represent the combined efforts of local, state and federal government agencies, are carried out in an open and transparent way, and are subject to extensive environmental review. More importantly, although these efforts are characterized as “plans” they are in fact permits and contracts between the wildlife agencies and local government permittees. These contracts, known as Implementing Agreements, create obligations that must be fulfilled to ensure the viability of each conservation plan. Adding new requirements, as we expect the fifth staff draft Delta Plan does, will also reduce many of the incentives that are essential to the durability of these contracts.

Given the HCP/NCCP attributes outlined in our May 6, 2011 letter, we continue to struggle to understand what deficiencies in the five Delta County HCP/NCCPs – policy or scientific – will be cured by subjecting them to an enforceable Delta Plan that does not recognize the value of these efforts to the region. We are unable to see how Delta Plan oversight results in increased public benefit, which is particularly troubling given the potential that funding is likely to be the limiting factor in carrying out the collective set of actions that are needed to improve the health of the Delta.

As we noted previously, the five Delta County HCP/NCCPs were developed on a foundation that mirrors the core principles articulated in the Draft Delta Plan, including a strong science information base that incorporates adaptive management and monitoring approved by the applicable trustee agencies. Yet it is possible that conservation projects undertaken pursuant to an adopted HCP or NCCP could be deemed inconsistent with the Delta Plan if, for instance, the project fails to adhere to the Delta Plan’s vision of adaptive management.² In that case, the HCP or NCCP permittees could be precluded from implementing mandatory elements of federal or state permits, such as adaptive

¹ Contra Costa County, Sacramento County, San Joaquin County, Solano County Water Agency, Yolo County

² Draft Covered Actions Checklist and Draft Certificate of Consistency Form handout

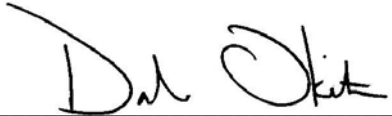
management responses developed in close coordination with FWS and CDFG, thereby jeopardizing regional conservation plans that required years to develop.

We reiterate our position that the statutory exemption in the California Water Code applies to all permits issued under the California Endangered Species Act and the Natural Communities Conservation Act and, by extension, to the adoption of an HCP/NCCP by a local jurisdiction. Activities covered under such HCP/NCCPs should also be exempt from the jurisdiction of the Delta Plan, at least to the extent that it pertains to the species and habitats covered in the HCP/NCCPs. We respectfully request that the Council direct staff to provide an expanded Delta discussion of the exemption of HCPs/NCCPs and HCPs/2081s to clarify that the Delta Plan is intended to complement the Delta County HCP/NCCPs, not to govern or supplant them.

EAST CONTRA COSTA COUNTY
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By 
John Kopchik
Executive Director

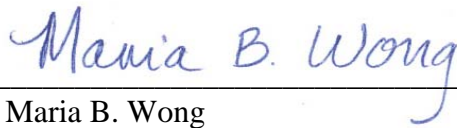
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